

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Magdalena Azmitia	Team: Squad #15	CCRB Case #: 201800201	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 12/29/2017 8:47 PM	Location of Incident: Ralph Avenue and Avenue J; At the 63rd Precinct stationhouse	Precinct: 63	18 Mo. SOL 6/29/2019	EO SOL 6/29/2019	
Date/Time CV Reported Mon, 01/01/2018 2:00 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 01/08/2018 10:59 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Mario Guerrero	06810	951796	063 PCT
2. SGT Herman Lai	581	949191	063 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jonathan Bourne	18854	958321	063 PCT
2. SGT Christopher Muller	04155	925795	063 PCT
3. POM Raymond Russo	17553	959173	063 PCT
4. POM Frank Vozzo	31805	953541	063 PCT
5. POM John Triano	31798	953494	063 PCT
6. POM Michael Ellis	24218	952707	063 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Mario Guerrero	Abuse: At Ralph Avenue and Avenue J in Brooklyn, Police Officer Mario Guerrero drew his gun.	[REDACTED]
B.SGT Herman Lai	Abuse: At the 63rd Precinct stationhouse, Sergeant Herman Lai did not process § 87(2)(b) complaint regarding officers.	[REDACTED]

Case Summary

On January 1, 2018, § 87(2)(b) filed this complaint via telephone with IAB, generating log #18-55. On January 8, 2018, it was received by the CCRB.

On December 29, 2017, at approximately 8:47 P.M., § 87(2)(b) vehicle was stopped at Ralph Avenue and Avenue J in Brooklyn by PO Mario Guerrero, PO Jonathan Bourne, and PO Raymond Russo, all of the 63rd Precinct. § 87(2)(b) cousin § 87(2)(b) was also in the vehicle. PO Guerrero allegedly had his gun drawn as he approached § 87(2)(b) vehicle (**Allegation A: Abuse of Authority**, § 87(2)(g) § 87(2)(b) was issued a summons for illegally tinted windows, and asked to see a supervisor. Sgt. Christopher Muller of the 63rd Precinct arrived and handed the summons to § 87(2)(b).

§ 87(2)(b) went to the 63rd Precinct stationhouse at approximately 9:30 P.M. on the same night to file a CCRB complaint regarding his interactions with PO Guerrero and Sgt. Muller. Sgt. Herman Lai of the 63rd Precinct allegedly ignored his request and instead said, "Get him out of here," and had two unidentified officers escort him out of the stationhouse (**Allegation B: Abuse of Authority**, § 87(2)(g) § 87(2)(b).

Video footage of the vehicle stop was obtained from PO Guerrero and PO Bourne's body worn cameras on April 2, 2018. No video footage of § 87(2)(b) interactions in the stationhouse was available.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Mario Guerrero drew his gun.

§ 87(2)(b) § 87(2)(g) did not allege that PO Guerrero drew his weapon in his telephone statement [BR 01]. In his sworn testimony, § 87(2)(b) stated that when his vehicle was stopped, PO Guerrero approached the front driver's side window with his weapon drawn and pointed at the ground [BR 02]. PO Guerrero told § 87(2)(b) to roll his window down and asked for § 87(2)(b) license and registration. § 87(2)(b) did not see at what point PO Guerrero drew his weapon. PO Guerrero did not have his weapon out when § 87(2)(b) gave him his license and registration, but § 87(2)(b) did not see when he put the gun away. PO Guerrero then issued a summons to § 87(2)(b) for illegally tinted windows, which § 87(2)(b) refused to take until it was placed on his dashboard by Sgt. Muller.

§ 87(2)(b) cousin § 87(2)(b) was also in the vehicle at the time, but § 87(2)(b) refused to provide § 87(2)(b)'s full name, date of birth, or contact information. As a result, the investigator was unable to obtain a statement from § 87(2)(b).

PO Guerrero testified that did not draw his weapon as he approached § 87(2)(b) vehicle or at any point during the vehicle stop [BR 03]. He added that he had no reason to believe that § 87(2)(b) was armed.

PO Bourne's testimony to the CCRB was consistent with that of PO Guerrero [BR 04]. He stated that none of the officers drew their weapons as they approached § 87(2)(b) vehicle.

Sgt. Muller testified that none of the officers at the scene had their weapons out in his presence, and he was not made aware of whether any officers had drawn their weapons before his arrival [BR 05].



201800201_20180423_1121_DM.mp4

[BR 06]

Video 1 of 3



201800201_20180423_1126_DM.mp4

[BR 07]

Video 2 of 3



201800201_20180423_1127_DM.mp4

[BR 08]

Video 3 of 3

Video 1 of 3, obtained from PO Guerrero's body worn camera, shows PO Guerrero, PO Bourne, and PO Russo exiting their vehicle and approaching § 87(2)(b) vehicle for the first time [BR 06]. As he approaches, his flashlight is seen being passed between his right and left hand several times. At 25 seconds, both of his hands are visible as he twists the flashlight. PO Guerrero is heard

speaking with § 87(2)(b) who hands several papers to him. PO Guerrero takes the papers in his right hand as he holds his flashlight in his left hand. The video ends with PO Guerrero and his partners returning to their vehicle with § 87(2)(b) documents.

Video 2 of 3, also from PO Guerrero's body worn camera, shows PO Guerrero and his partners approaching § 87(2)(b) vehicle for the second time to issue a summons [BR 07]. His right hand is visible holding the summons, while his left is seen holding his flashlight. At 31 seconds, PO Guerrero attempts to give § 87(2)(b) the papers through the opening in the window. He does so with his right hand, while his left holds the flashlight within the frame. For most of the video both of PO Guerrero's hands are visible as he attempts to give the summons to § 87(2)(b).

Video 3 of 3 was obtained from PO Bourne's body worn camera, and shows PO Guerrero attempting to issue the summons to § 87(2)(b) from PO Bourne's point of view where he was standing to PO Guerrero's left [BR 08]. Both of PO Guerrero's hands are seen intermittently throughout the video, with his right hand holding the summons and his left hand holding the flashlight.

§ 87(2)(g)

Allegation (B) Abuse of Authority: Sergeant Herman Lai did not process § 87(2)(b) complaint regarding officers.

Following the vehicle stop, § 87(2)(b) went to the 63rd Precinct stationhouse to file a complaint regarding the incident [BR 02]. Upon entering the stationhouse, he saw Sgt. Muller standing next to Sgt. Lai, who was seated at the desk. § 87(2)(b) approached and said to Sgt. Lai, "I'm here to get a CCRB." Sgt. Lai replied, "Why are you talking to me like that?" When § 87(2)(b) asked what he meant, Sgt. Lai said "Get him out of here," and told two unidentified officers, who § 87(2)(b) did not see because they came from behind him, to take him out of the stationhouse. Sgt. Lai did not offer § 87(2)(b) the CCRB complaint form, or tell § 87(2)(b) about his options on how to file a CCRB complaint.

Sgt. Lai testified that he did not interact with § 87(2)(b) on the incident date [BR 12]. Upon being shown a photo of § 87(2)(b) Sgt. Lai did not recognize him. Sgt. Lai did not recall anyone going to the stationhouse to file a complaint on the incident date, or anyone who was being disorderly or needed to be removed from the stationhouse.

Sgt. Muller testified that during the original car stop, § 87(2)(b) asked for Sgt. Muller's command and stated that he was going to file a complaint [BR 05]. Sgt. Muller went to the 63rd Precinct stationhouse to advise Sgt. Lai, who was the desk sergeant, that § 87(2)(b) was going to the stationhouse to make a CCRB complaint. Approximately 10 minutes later, Sgt. Muller observed § 87(2)(b) enter the stationhouse and immediately begin yelling, stating that the situation was not right and that he should not have gotten a summons. Sgt. Lai asked § 87(2)(b) approximately five times to be quiet, and stated that he could file the complaint but that he would need to quiet down and stop yelling first. § 87(2)(b) continued to yell, and Sgt. Lai informed him that if he continued in that manner, he would need to leave the stationhouse. Sgt. Muller did not recall how § 87(2)(b) responded

to that statement, but noted that § 87(2)(b) continued to yell. Sgt. Lai pointed to a poster listing the CCRB's information, and told § 87(2)(b) that he could call that number to file the complaint but that he needed to leave the stationhouse. § 87(2)(b) continued to yell, but then left the stationhouse on his own. No officers were instructed to physically remove § 87(2)(b) from the stationhouse.

PO Michael Ellis, who was the telephone switchboard operator at the time of the incident, also did not recall seeing § 87(2)(b) at any point on the incident date [BR 13]. He did not recall § 87(2)(b) or any other civilian going to the stationhouse to file a complaint, being loud or disorderly, or being removed from the stationhouse. PO Ellis was not made aware of the incident after the fact.

The 63rd Precinct command log from the night of the incident contained no entries regarding § 87(2)(b) or any civilian attempting to file a CCRB complaint [NYPD 10].

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been a party to two CCRB complaints and has been named as a victim in four allegations [BR 15].
 - § 87(2)(b)
- PO Mario Guerrero has been a member of service for six years and this is the first CCRB complaint to which he has been a subject.
- Sgt. Herman Lai has been a member of service for seven years and has been a subject in five CCRB complaints and 12 allegations, of which five were substantiated.
 - Case #201601869 involved substantiated allegations of pepper spray use, physical force, premises entry, threat of force, and discourteous language. The Board recommended formalized training, which the NYPD implemented.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On May 14, 2018, a request to determine if a Notice of Claim was filed was submitted; confirmation from the Office of the New York City Comptroller will be forwarded upon receipt [BR 14].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 15

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date